

REMARKS

Claims 1-13, 23-36, 53-66, 69-70 and 72 are pending in the current application. Claims 14-22 and 37-52 are cancelled herein. Claims 1-4, 6-11 and 36 have been amended. Claim 72 has been added. Support for Claim 72 may be found throughout the specification, including in originally filed Claim 36.

ELECTION/RESTRICTION

A requirement for restriction has been made under 37 C.F.R. 1.499 between the inventions of Groups:

- I. Claims 1-8 and 11-66, drawn to an immunogenic composition and a vaccine.
- II. Claims 9-10, drawn to an immunogenic composition comprising a polynucleotide encoding a polypeptide.
- III. Claims 69-70, drawn to a method for treating or preventing *Bordetella* infection.

Applicants elect Group I with traverse. Applicants respectfully submit that the Examiner has failed to concisely state the particular reasons why Rosen et al. (WO 2001/054733) anticipates the technical feature of Group I. In contrast, the Examiner has made a mere statement of conclusion, that Rosen et al. teaches an immunogenic composition comprising an immunogenic polypeptide comprising an amino acid sequence which has at least 85% identity to an amino acid sequence of SEQ ID NO: 2 from Group 2, page 2 of the Office Action. A mere statement of conclusion is inadequate. MPEP § 808.01. Rosen et al. is 874 pages in length without a published sequence listing; the sequence listing was only provided on electronic media (see paragraph [1] of Rosen et al.). Therefore, the Examiner has not established that Groups I-III lack the same or corresponding technical feature.

Furthermore, Groups I and II should be rejoined, as they share a corresponding technical feature, the immunogenic compositions of Group II comprise polynucleotides that encode the amino acid sequences set forth in SEQ Group 2, as recited in Examiner's Group I. Nucleotide sequences encoding the same protein are

considered to satisfy the unity of invention standard. MPEP § 1850 XIII. Applicants respectfully request rejoinder of Groups I and II.

Polypeptide Election Requirement to Groups I, II, and III

For Groups I, II and III Applicants were further required to elect the polypeptide from SEQ Group 1 or SEQ Group 2 in the immunogenic composition.

SEQ Group 1 relates to polynucleotides and SEQ Group 2 relates to polypeptides.

Applicants elect polypeptide SEQ ID NO: 34 from SEQ Group 2 (as recited in Claims 1-5, 11-13, 23-36, 53-66 and 72) without traverse.

Applicants further elect polynucleotide SEQ ID NO: 33 from SEQ Group 1 (as recited in Claims 6-8).

Election of Species

Antigen Election Requirement to Group I and Group III

The Office Action also requires election of species of the generic invention for Group I and III from:

1. Pertussis toxin;
2. Adenylate cyclase;
3. Dermonecrotic toxin;
4. Lipopolysaccharide;
5. Type III ss

Applicants elect **(1) Pertussis toxin** for purposes of initial examination on the merits.

Antigen Election Requirement to Group I and Group III

The Office Action also requires election of species of the generic invention for Group I and III from:

1. PRP capsular oligosaccharide or polysaccharide from *Haemophilus Influenzae* B Polysaccharide;
2. Hepatitis B surface antigen (HbsAg);

3. Inactivated Polio Vaccine;
4. N. meningitidis protein;
5. Men A, C, W, or Y capsular polysaccharides or oligosaccharides;
6. Capsular polysaccharides or oligosaccharides from S. pneumoniae;
7. Killed Attenuated Hepatitis A virus.

Applicants elect **(2) Hepatitis B surface antigen (HbsAg)** for purposes of initial examination on the merits.

Applicants elect the species for purposes of initial examination on the merits. In the event that a generic claim is found allowable, Applicants understand that additional species which depend from and otherwise include all the limitations of the generic claims will be considered as provided by 37 CFR § 1.141.

Claims 1-8, 11-13, 23-36, 53-66 and 72 read on the elected invention.

Applicants also note that the subject matter of Groups I and III are related to each other as product and a process of using the product, respectively. When product claims (for example, one or more of Claims 1-8, 11-13, 23-36, 53-66 and/or 72) are found to be allowable, Applicants respectfully request rejoinder of process claims that are dependent or otherwise include all the limitations of the allowed product claims as required by MPEP § 821.04(b).

Applicants expressly reserve the right to prosecute the subject matter in the non-elected claims, originally filed claims, or any other claims supported by the specification in one or more continuing applications.

CONCLUSION

Applicants elect **Group I with traverse** and further elect the following species: **(1) Pertussis toxin and (2) Hepatitis B surface antigen (HbsAg)**

Should any outstanding issues remain, the Examiner is encouraged to contact Applicants' undersigned representative.

Respectfully submitted:



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